

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MARCO ANTONIO NEGRETE-SAENZ,  
Defendant.

CASE NO. 1:02-CR-05408 - AWI - 1

ORDER DENYING DEFENDANT'S MOTION  
PURSUANT TO TITLE 18 U.S.C. § 3582(c)(2)

(Doc. 410)

The defendant has filed a motion under 18 U.S.C. § 3582(c)(2), seeking a reduction in his sentence on the basis of Amendment 782 to the Sentencing Guidelines which revises the Drug Quantity Table in USSG § 2D1.1 and reduces by two levels the offense level applicable to many drug trafficking offenses. The Government has opposed the motion on the basis that the defendant is not eligible for a reduction under U.S.S.G. § 1B1.10. For the following reasons, the Court will deny that motion.

Section 3582(c)(2) authorizes district courts to modify an imposed sentence “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). Effective November 1, 2014, the Commission promulgated Amendment 782, which generally revised the Drug Quantity Table and chemical quantity tables across drug and chemical types. The Commission also voted to make Amendment 782 retroactively applicable to previously sentenced defendants.

1       However, pursuant to U.S.S.G. Section 1B1.10 (a)(2)(B): “A reduction in the defendant’s term  
2 of imprisonment is not consistent with this policy statement and therefore is not authorized under 18  
3 U.S.C. § 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of lowering the  
4 defendant’s applicable guideline range.” U.S.S.G. § 1B1.10 (a)(2)(B). A district court’s authority to  
5 modify a sentence is constrained by the Sentencing Commission. *Dillon v. United States*, 130 S.Ct.  
6 2691 (2010).

7 In this case, the district court found a base offense level of 38 pursuant to USSG § 2D1.1, as the  
8 quantity of methamphetamine involved in the offense was in excess of 15 kilograms of actual  
9 methamphetamine. Under the amended guidelines, a level 38 applies where the actual amount of  
10 methamphetamine exceeds 4.5 kilograms. The defendant's offense level remains exactly what it was at  
11 the time of sentencing. Section 1B1.10 directs: "the court shall substitute only the amendments listed in  
12 subsection (c) for the corresponding guideline provisions that were applied when the defendant was  
13 sentenced and shall leave all other guideline application decisions unaffected." U.S.S.G. § 1B1.10  
14 (b)(1).

15 The Ninth Circuit agrees that where application of the pertinent amendment does not result in a  
16 different sentencing range, no reduction of sentence may occur. *United States v. Leninear*, 574 F.3d 668,  
17 673-74 (9th Cir. 2009) (the final sentencing range was unchanged due to the operation of the grouping  
18 rules). Accordingly, the defendant may not receive any relief under Section 1B1.10.

19 The defendant's motion pursuant to Section 3582 is hereby denied.

IT IS SO ORDERED.

Dated: April 27, 2015

  
SENIOR DISTRICT JUDGE